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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

STEWART KNIGHT,

Defendant and Appellant.

B233116

(Los Angeles County  
Super. Ct. No. YA080684)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Scott T. Millington, Judge. Affirmed.

Lise M. Breakey, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Stewart Knight pled no contest second degree robbery. He appealed. Our independent review of the record reveals no arguable issues that would aid Knight. We affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

According to the probation report, Knight was observed attempting to conceal several bottles of lotion under his jacket at a CVS store. Witnesses alerted a CVS employee, Ruben Seiler. When Knight attempted to leave the store with the merchandise, Seiler blocked his way and told him to return the items. Knight refused and pushed Seiler. A fight broke out. Knight kned Seiler in the face, breaking his nose. Knight was arrested and booked by the Inglewood Police Department. During the booking process he admitted stealing from the store. He said he was homeless and wanted to sell the items to get money for food.

A felony complaint was filed charging Knight in count 1 with second degree robbery (Pen. Code, § 211, statutory references are to the Penal Code) and in count 2 with assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)). It was alleged that Knight personally inflicted great bodily injury on Seiler in the commission of the robbery within the meaning of section 12022.7(a). Before a preliminary hearing could be held, the prosecutor and defense agreed to a plea agreement. Knight changed his not guilty plea to a plea of no contest to count 1. The court found the plea was freely and voluntarily made with an express and knowing waiver of Knight's constitutional rights and an understanding of the consequences of the plea. The court accepted the plea and found Knight guilty on count 1.

Prior to sentencing, Knight moved to replace his appointed counsel under *People v. Marsden* (1970) 2 Cal.3d 118. He claimed that his counsel did not defend him. Knight said his counsel told him that the witnesses on the felony case were present, but he did not see them when he made his plea. The court assured Knight that the witnesses were ready to go forward at the preliminary hearing. After a colloquy with Knight about the charges he was facing in this and other pending cases, the court asked whether the issue

was his representation in regard to the plea. Knight said that it was. He said he did not really have any other issue with his counsel. Defense counsel said that she recognized the victim in the robbery in the courtroom on the date for the preliminary hearing. She also spoke with the prosecutor who said they were ready to proceed. In the course of plea negotiations, defense counsel asked the court whether it would consider probation for the robbery count because Knight had never been to state prison. The court refused to agree to anything lower than the two-year prison term offered by the prosecution. Defense counsel discussed his options with Knight, and told Knight she did not think the offer of a plea would get worse or better if he proceeded with the preliminary hearing. She told Knight that they could go forward with the preliminary hearing. She also explained the possible sentences on the charged crimes and various defenses. Knight decided to accept the plea agreement with a two-year prison sentence.

In response, Knight said he was “seeking more of a defense, how I can maybe obtain one of the charges rather than other, given the fact that on a technical basis, one of charges were achieved in a sense as far as me . . . actually doing the robbery. [¶] So I wasn’t really getting adequate response what her angle was as far as trying to defend me and receiving or obtaining the lesser charge or charge I was more looking for.” The court asked Knight whether he understood that it was the court which rejected an agreement for probation based on Knight’s prior numerous grants of summary probation. The court explained that a robbery occurred when Knight took property from the store, fought with an employee, and injured him. Defense counsel said she had explained to Knight why he was charged with robbery rather than just theft. Knight argued that he had never exited the store with the merchandise. His attorney said she had discussed with him whether he had to actually leave the store in order to commit robbery because according to the police report, he had passed the security sensors at the store exit when the fight occurred. Knight agreed that his attorney had explained this to him.

The court again inquired as to the nature of Knight’s issue with his representation. Knight repeated that his counsel “really wasn’t trying . . . seeking an angle” for him. He conceded that his counsel did not force him to take the plea offered. Knight said he was

worried that the charge to which he had pled no contest was a strike. The court responded that this had been explained by the court before Knight entered his plea and that the plea form also advised him of this consequence. Knight told the court that it was right that he had been advised of the consequences. Defendant offered nothing further. The court denied the *Marsden* motion and found defendant's counsel had properly represented him.

Knight was sentenced to the low term of two years in prison on count one, a violation of section 211. He filed a timely appeal.

### **DISCUSSION**

We appointed counsel to represent Knight on appeal. Appointed counsel filed an appellate brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. We advised Knight that he had 30 days within which to submit by brief or letter any contentions or arguments he wished this court to consider.

No response has been received.

We have independently reviewed the record in accordance with *People v. Wende*, *supra*, 25 Cal.3d at pp. 441-442, and find no arguable issues that could aid Knight.

### **DISPOSITION**

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.